

to an acceptance thereof which would render the Crown responsible for payment at the contract prices.

Judgment appealed from, 12 Ex. C.R. 198, reversed in part, the CHIEF JUSTICE and DAVIES, J., dissenting. Appeal allowed in part with costs.

J. A. MacInnes, for appellants. Newcombe, K.C., for respondent.

---

## Province of Ontario.

---

### COURT OF APPEAL.

---

Moss, C.J.O.]

[April 25.]

MCCARTHY & SONS CO. v. W. C. MCCARTHY.

*Appeal—Court of Appeal—Security for costs—Dispensing with security—Property of appellant in hands of respondents.*

Motion by the defendant for an order dispensing with the giving of security for costs of an appeal to the Court of Appeal from the order of a Divisional Court, or reducing the amount of the security to be given.

*Featherston Aylesworth*, for defendant. *Grayson Smith*, for plaintiffs.

MOSS, C.J.O.:—An appellant applying for an order dispensing with the giving of security for costs under Rule 826, or reducing the amount of the security to be given, must make out a case beyond reasonable doubt. The onus is upon him, and the matter should not be left in uncertainty. The ground presented in this case is that the plaintiffs have in their hands or under their control, by means of a receiving order, property or means of the defendant sufficient to answer their costs of the appeal, and which would, in the event of the appeal failing, be available for that purpose. But I am not satisfied as to this upon the material before me. There is a conflict as to the value of the 63 shares and as to the extent of the charges against them and the policies of life assurance, as well as to the full amount of the claims against the defendant in respect of which they may be made exigible. The matter is left in too much uncertainty to justify